

WETLANDS COUNCIL

MINUTES

July 22, 2008

The Wetlands Council met on Tuesday, July 22, 2008 in room 112 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Lawrence E. Morse, Vice Chair John S. Cobb, Chip Kimball, Dennis Lydon, Seth Prescott, Jack Ruderman, Thomas Sloan, Russ St. Pierre and David Thompson

Absentees: Sharon Champagne, Thomas Chrisenton, Paul Dionne, Steve Perry

Also present were: Amy Samson, Council Appeals Clerk and Carolyn Guerdet, Council Clerk

The meeting was called to order by Chairman Morse at 9:10 with a quorum present.

1. **Adoption of Interim Rules** - Gretchen Hamel, Administrator, Legal Unit

Councilor Kimball moved to adopt the interim rules as approved by the Joint Legislative Committee on Administrative Rules, second by Councilor Cobb. Motion was voted unanimously.

The next step is to start the process of adopting the interim amendments as regular rules.

2. **Approval of Minutes of June 10, 2008 Council Meeting**

A motion was made by Councilor Lydon, second by Councilor Sloan to approve the June 10, 2008 minutes as corrected. Motion was voted unanimously. Chairman Morse abstained.

3. **Wetlands Bureau Update**

Collis Adams, Administrator, reported that HB1471 became law and will go into effect September 12, 2008. There will be: 1) in-house staff training 2) modifications in the applications, forms, guidance documents, and updating the website 3) continued outreach and education efforts.

- There are 2 staff openings, one in the north country and the other in the compliance section.
- The Memorandum of Understanding with the Department of Transportation which will establish another E-4 position for the I-93 project is close to being finished.
- In the Comprehensive Shoreland group there have been 2.5 positions filled. Between 80 and 90 outreach events have already been held. There are 2 additional permit

positions and 2 additional compliance positions that have been established but not filled at this time.

- Fee account is stable.
- Rulemaking Efforts:
Stream Crossing work group continues to meet and will probably meet 1 more time in August. The rule set that will be coming out is in good shape. The formal rule making process will then be initiated. They have opted not to do an in lieu fee option for mitigation at this time. Councilor Kimball shared his concerns about the existing smaller stream crossings and smaller culverts.
- Gretchen continues to work on the over-all rule re-write.

Councilor Sloan requested the Wetlands Presentation outreach that is being given to the public be given to the Wetlands Council next meeting. It will be set up for the August 12th meeting.

Attorney Blenkinsop joins the meeting.

4. **Other Business** -

Councilor Sloan made a motion to go into attorney/client session at 9:44 AM. Second by Councilor Lydon. Motion passed unanimously.

At 11:20 the meeting was reconvened by Chairman Morse.

5. **Status of Appeals**

The following will be accepted or denied at the next Council meeting:

- Docket No. 08-28 WtC – James and Kim Gever Appeal WB #2008-00035
The appeal was received on June 30, 2008.
- Docket No. 08-29 WtC – Silver Lake Association Appeal
The appeal was received on June 30, 2008.
- Docket No. 08-31 WtC – Michele Walker Appeal WB #2007-02435
The appeal was received on July 3, 2008.
- Docket No. 08-32 WtC – William J. Wilson Appeal WB #2007-02744
The appeal was received on July 8, 2008.
- Docket No. 08-38 WtC – Pickman & Sons Development Co. Appeal WB #2007-01160
The appeal was received on July 7, 2008.

Appeals transferred by the new law from the Water Council to the Wetlands Council:

- Docket No. 08-33 WtC (Formerly Docket No. 08-06 WC) Marlene & Jerry Schultz Appeal
Water Council held a Pre-Hearing Conference with the parties on May 19, 2008. At the PHC, a 30 day stay was granted. A letter will be sent requesting status of appeal.

- Docket No. 08-34 WtC (Formerly Docket No. 08-15 WC) Ronald E. Gocht Appeal
Water Council held a Pre-Hearing Conference with the parties on June 9, 2008. At the PHC a 90 day stay was granted. A letter will be sent requesting status of appeal.
- Docket No. 08-35 WtC (Formerly Docket No. 08-19 WC) Frank Faticanti Appeal
Appeal was received on March 28, 2008.

It was agreed by the Council to accept any appeal the Water Council has previously accepted.

Councilor Lydon moved to accept this appeal. Second by Councilor Kimball. Motion was accepted unanimously.

Presiding Officer will be Councilor Kimball.

- Docket No. 08-36 WtC (Formerly Docket No. 08-21 WC) Susan A. Youseff Appeal
Appeal was received on April 21, 2008. The Water Council tabled the appeal on May 14, 2008.
- Docket No. 08-37 WtC (Formerly Docket No. 08-25 WC) Kenneth R. Ivester Appeal
Appeal was received on May 27, 2008.

Councilor Lydon moved to table Docket Nos. 08-36 and 08-37 until the next Wetlands Council meeting. Second by Councilor Thompson. Motion was accepted unanimously.

Appeals awaiting Council action:

- Docket No. 08-04 WtC – Porter Trust Appeal: WB #2006-02705
On May 22, 2008 the Petitioner filed a Motion to Supplement the Official Record. On June 2, 2008 DES filed an Objection to the Petitioner's Motion to Supplement the Record. On June 10, 2008, Council tabled the Motion and Objection until today's Council meeting. Council decided to leave this on the table and set a new Pre-Hearing Conference.

Presiding Officer is Councilor Kimball

Docket No. 08-24 WtC – 127 Water Street Realty Inc. WB #2007-01794
The appeal was received May 20, 2008.

Councilor Kimball made a motion to accept the appeal. Second by Councilor Thompson. Motion was accepted unanimously

Presiding Officer is Councilor Kimball

Decisions that need to be written/finalized and issued:

- Docket No. 04-21 WtC – Lake Shore Realty & Trust c/o Robert E. Gayner WB #2001-01294
Chairman Morse is writing the Decision.
- Docket No. 06-12 WtC – Bodanza et al Appeal WB #2002-02483
Council has denied the appeal. Chairman Morse is writing the Decision.

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- Docket No. 07-02 WtC – Town of Barrington: WB#2004-02817
On May 13, 2008 Council reopened deliberations and voted to grant the appeal. Councilor Sloan is writing the Decision.
- Docket No. 07-09 WtC – Derry Conservation Commission WB #2006-00773
Councilor Chrisenton is writing the Decision.
- Docket No. 07-10 WtC – Renate Ranniger WB #2004-01185
Council has denied the appeal. Councilor Cobb is writing the Decision.
- Docket No. 07-15 WtC – Charles Kalil WB #2006-02611
Council has granted the Motion to Summarily Dismiss. Chairman Morse is writing the Decision.
- Docket No. 07-23 WtC – Steve Bragg: WB #2006-01494
A Request for Reconsideration was received May 19, 2008 by the appellant. On May 20, 2008 an Objection to the Request for Reconsideration was filed by DES. Decision and Order to deny the appeal has been drafted and needs to be sent to Anthony.
- Docket No. 07-24 WtC – Town of Holderness Conservation Commission WB #2006-02635
Council has dismissed the Appeal. Councilor Lydon to write the Decision and Order.
- Docket No. 08-01 WtC – Town of Newington Conservation Commission: WB #2007-0829-01
At the March 17, 2008 Pre-Hearing Conference the parties discussed the possibility of filing an Assented-to-Motion referencing Env-WtC 206.01 (b). The Motion has been filed and a Decision and Order is being finalized to deny the appeal.
- Docket No. 08-02 WtC – William D. Hughes Appeal: WB #2007-01174
Council has denied the Appeal. Councilor Kimball is writing the Decision.
- Docket No. 08-05 WtC – Rick Belanger Appeal: WB #2007-01624
Council has denied the Appeal. Councilor Kimball is writing the Decision.
- Docket No. 08-12 WtC – Bill K. Lau Appeal: WB #2007-00398
Council has dismissed the appeal. Amy Samson will contact the appellant.

Hearing or Pre-Hearing Conferences to be scheduled:

- Docket No. 06-11 WtC – Dennis Proulx : WB #2006-00769
Presiding Officer is Chairman Morse.
- Docket No. 07-01 WtC – Robert & Betty Howland: WB #2006-01654
Presiding Officer is Chairman Morse.
- Docket No. 07-06 WtC – Patricia Woolson: WB #2006-02796
Presiding Officer is Chairman Morse.
- Docket No. 07-07 WtC – Wendy McCarthy: WB #2006-02581
A Pre-Hearing Conference is scheduled for July 29, 2008, time to be determined. Presiding Officer is Chairman Morse.

- Docket No. 07-27 WtC – Robert Bourgeois: WB # 2007-00473
A Hearing is to be scheduled for September, 2008. Presiding Officer is Chairman Morse.
- Docket No. 07-30 WtC – Thomas & Kellie Greer Appeal: WB #2006-00460
Pre-Hearing Conference will be scheduled for September. Presiding Officer is Councilor Lydon.
- Docket No. 08-03 WtC – David Johnson-Johnngis Realty LLC Appeal: WB #2006-00700
Presiding Officer is Councilor Lydon.
- Docket No. 08-07 WtC – Joseph and Rose Marino Appeal: WB #2007-00926
Pre-Hearing Conference will be scheduled for July 29, 2008 at 8 AM. Presiding Officer is Chairman Morse.
- Docket No. 08-09 WtC – John Goode, et al Appeal: WB #2007-00933
Presiding Officer is Councilor Lydon.
- Docket No. 08-13 WtC – Jeffrey Costura Appeal: WB #2007-01416
Presiding Officer is Councilor Lydon.

Following is a list of Appeals that require no action at this time:

- Docket No. 06-16 WtC – Shane Forest: WB #1999-01294
Settlement discussions continue. Status inquiry letter was sent on April 9, 2008. A progress report request was sent directly to Mr. Forest and there has been no response.

At this time, the Council decided to schedule Pre-Hearing Conferences in September for the following Appeals:

06-11 WtC Dennis Proulx, 07-01 WtC Robert & Betty Howland, 07-07 Wendy McCarthy, and 07-27 WtC Robert Bourgeois.

- Docket No. 07-14 WtC – Courtney Galuzzo: WB #2007-00291
DES issued the permit - Appellant should be withdrawing their appeal. A status request letter has been sent to all parties to respond with a status to the Council by the August 12, 2008 Council meeting.
- Docket No. 07-22 WtC – Claire Salois: WB #2006-03223
A withdrawal was received on July 21, 2008.
- Docket No. 07-28 WtC – Concord Country Club: WB #2005-00474
At the Pre-Hearing Conference on March 3, 2008, the parties requested the proceedings to be stayed for 30 days pending settlement discussions. A status request letter has been sent to all parties to respond with a status to the Council by the August 12, 2008 Council meeting.
- Docket No. 08-16 WtC Jumanna Stark Appeal WB #2007-00473
At the June 2, 2008 Pre-Hearing Conference the parties requested a hearing. A hearing will be scheduled in September.
- Docket No. 08-26 WtC – Steve and Rebecca Whitney

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The appeal was received insufficient. A letter was sent to the appellant and there is still time to file a sufficient appeal.

5. **It was decided by the Council to hold Wetlands Council meetings both the 2nd and 4th Tuesdays in the future to review the rules and work through the appeal list.**
6. **Next Meeting -** August 12, 2008.
7. **Adjournment -**

Meeting was adjourned.